IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7319 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

RAMESHCHANDRA AMRATLAL MODI

Appearance:

1. Special Civil Application No. 7319 of 2004

MR HS MUNSHAW for Petitioner No. 1

MR VM DHOTRE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/07/2004

ORAL JUDGEMENT

Rule. Mr.Dhotre waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates for the parties, the petition is heard for final disposal today.

2. By the present petition, the petitioner, Ahmedabad Municipal Transport Service, has challenged the legality and validity of the order dated 27th February 2004 passed by the Industrial Tribunal, Ahmedabad. By the said order passed below application Ex.2 in Complaint (IT) No.298/03, the Industrial Tribunal was pleased to grant interim injunction in favour of the respondent-workman to the effect that till the main proceedings, i.e. Complaint (IT) No.298/03 is finally disposed of, the petitioner is at liberty to continue with the departmental inquiry against the respondent workman, however till the final outcome of the criminal case against the respondent and without taking into account the decision therein, the petitioner shall not pass any final order without permission of the Court.

3. The short facts leading to the present petition are as under:

The respondent is working with the petitioner Corporation since 15.10.73 as Electrician. It is the case of the petitioner that on 16.9.2003, when the respondent was on duty and at about 5.00 p.m. when the respondent was leaving the campus of the office, he was checked by the watchman in presence of senior officer Mr.Dodia upon some suspicion and during checking, it was found that the respondent was carrying a bag containing 5 starters. Based on the said event, chargesheet came to be issued against the respondent on 23.9.2003. Pursuant to the said chargesheet dated 23.9.2003, a full-fledged departmental inquiry was conducted against the respondent. Statements of witnesses were recorded and the respondent was also given copies of the documents upon which the petitioner sought to place reliance. At the end of the inquiry, the Inquiry Officer submitted his report dated 11.11.03 concluding that the charges against the petitioner stand proved. On the basis of the Inquiry Officer's report, the petitioner issued another show cause notice dated 2.12.2003 calling upon the respondent to show cause as to why he should not be dismissed from service. It is the case of the petitioner that instead of replying to the said show cause notice dated 2.12.2003, the respondent approached the Industrial Tribunal by filing Complaint (IT) No.298/2003. In the said proceedings, the Industrial Tribunal passed the

impugned order dated 27.2.2004 below application Ex.2, as mentioned above. It is this order dated 27.2.2004 that has been challenged by the petitioner in the present petition.

4. The learned advocate Shri Munshaw for the petitioner has contended before me that the proceedings of Reference (IT) No.137/2001 are entirely different from the facts and issues arising in Complaint (IT) No.298/03 and that therefore the Industrial Tribunal gravely erred in granting the stay as mentioned above. The learned advocate Shri Munshaw has also submitted that the Industrial Tribunal erred in directing stay of the departmental inquiry till the conclusion of the criminal case. It is his case that the departmental proceedings are to be conducted on the principles which are vastly different from those involved in the criminal proceedings and the nature of proof required in the departmental proceedings are also different. It is his contention that staying the departmental inquiry till the outcome of the criminal case would adversely affect the administration and the public exchequer. The petitioner has further submitted that the respondent is under suspension and is being paid subsistence allowance at the rate of 75 per cent of his salary. Staying the departmental proceedings would therefore be prejudicial to the petitioner as the respondent would continue to draw subsistence allowance and the department would be precluded from concluding the proceedings.

5. On the other hand, learned advocate Mr.Dhotre appearing for the respondent has contended before me that the order of the Industrial Tribunal is perfectly just and legal and calls for no interference. It is his contention that the respondent workman is working with the petitioner Corporation since 1973 and that his record is clean. He has submitted that the charges are not serious and that, therefore, the respondent should not be permitted to be dismissed from service. Learned advocate Shri Dhotre has also contended that the charges in the departmental proceedings as well as in the criminal case are also same. It is, therefore, his case that permitting the department to conclude the proceedings without waiting for the outcome of the criminal case would cause prejudice to the respondent workman. Learned advocate Shri Dhotre has also placed reliance on regulation No.16.6.5 of the Service Regulations formulated by the petitioner and has submitted that the said regulation required that the departmental proceedings should be stayed till the final outcome of

the proceedings before the Criminal court. Learned advocate Shri Dhotre has placed reliance on a decision of the Hon'ble Supreme Court reported in AIR 1988 SC 2118 to contend that the departmental proceedings cannot be continued simultaneously with the criminal proceedings. He has also relied on the orders dated 19.2.97 and 6.8.2002 passed by this Court in support of his contention that till the criminal case is over, the departmental proceedings should be stayed. Learned advocate Shri Dhotre has also placed reliance on a decision reported in (2002) 1 SCC 100 (Roshan Deen v. Preeti Lal) and contended that this Court should not interfere with the order of the Industrial Tribunal in exercise of powers under Article 227 of the Constitution of India.

6. I have considered the submissions made on behalf of the rival parties. The Industrial Tribunal by its impugned order dated 27.2.2004 was pleased to direct stay of the final order in the departmental inquiry till the criminal case against the respondent is finalised. To arrive at the said conclusion, the Industrial Tribunal found that the facts involved in the disciplinary proceedings as well as in the criminal case are same and that therefore, it would be necessary to stay the final outcome in the departmental proceedings till the criminal case is over. It is not in dispute that the charge levelled against the respondent was that on 16.9.2003 when at about 5.00 O' clock in the evening after being relieved from the duties, instead of leaving the premises from Gate No.2, he was leaving the premises through the office door with a bag in his hand and that therefore the watchman got suspicious and caught hold of the respondent and his bag was checked in presence of the superior officer when he left the bag and ran away. Upon checking the bag, it was found that it contained a plastic bag in which there were 5 starters. Thus the respondent is alleged to have committed theft of the property of the petitioner Company. It is not in dispute that for the very same incident, the petitioner is being tried in a criminal case also. The question, however, before me is whether till the final disposal of the criminal case, is it necessary to direct the petitioner to refrain from passing the final order in the departmental proceedings which have been initiated against the respondent.

7. Law on this point is by now well settled. In the decision reported in AIR 1988 SC 2118 (Kusheshwar v. M/s.Bharat Coking Coal Ltd.), the Hon'ble Supreme Court observed that while there could be no legal bar for simultaneous proceedings being taken, yet there may be

cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In para 6 of the said decision, following observations have been made:

> "6. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

The issue has been considered by the Hon'ble Supreme Court many times thereafter also. In a decision reported in AIR 1997 SC 13 (State of Rajasthan v. B.K.Meena) the Hon'ble Supreme Court considered all earlier decisions on the point and observed that staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case. The Hon'ble Supreme Court further observed that the approach and objective in the criminal proceedings and disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

Staying of disciplinary proceedings pending criminal proceedings should not be a matter of course. It will be useful to reproduce some of the observations made by the Hon'ble Supreme Court in the said decision:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave, but that the case must involve complicated questions of law and fact. Moreover, 'advisability' 'desirability' or 'propriety' as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is not also an invariable rule. It is only a factor which will go in the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held

over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent official also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, that is for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

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17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

A similar issue once again came up before the Hon'ble Supreme Court and it was decided in the decision reported in AIR 1997 SC 2232 (Depot Manager, A.P.S.R.T. Corpn. V. Mohd. Yousuf Miya). Relying on the case of B.K. Meena (supra), the Hon'ble Supreme Court observed that there would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Following observations of the Hon'ble Supreme Court in para 6 can be noted :

..... We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to law down any guidelines as

inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted, it should be in accordance with proof of the offence as per the evidence defined under the provisions of Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, the prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence is also different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under

sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

In yet another decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1416 (M. Paul Anthony v. Bharat Gold Mines Ltd.), the above decisions came up for consideration and after examining the law on the point, the Hon'ble Supreme Court noted the conclusion which are deducible from various decisions on the point and observed as follows:

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the

> employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

From the above decisions of the Hon'ble Supreme Court, considering the case of desirability of staying the departmental proceedings till the criminal case against the Government servant is over, it can be seen that the departmental proceedings and criminal case can be proceeded simultaneously and there is no bar in they being conducted simultaneously. It would be desirable to stay the departmental proceedings till the conclusion of the criminal case if the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact. Even in such a case, the situations cannot be considered in isolation to stay the departmental proceedings and due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

8. Applying the above principles to the facts of the present case, I am of the opinion that the issues involved for which the respondent is being tried departmentally as well as in criminal case cannot be termed as those involving charges of grave nature and also involving complicated questions of law and fact. As narrated above, the charge against the respondent is simple, namely, that on a particular day while leaving the factory premises, he tried to commit theft of certain articles. It cannot be said that any complicated questions of law and fact would arise in such a case. In my view, therefore, the Industrial Tribunal erred in directing the petitioner not to pass final order in the departmental proceedings till the criminal case against the respondent is finally decided.

9. The reliance placed by the learned advocate for the respondent upon the regulation 16.6.5 of the Service Regulations is also baseless. Learned advocate for the respondent has particularly sought to rely on the note below regulation 16.6.5 and contended that regulations of the petitioner itself require that in a situation as the present one, the departmental proceedings should not be completed till the completion of the criminal proceedings. In my view, no such reading of the said regulation is permissible. The said note only provides that in cases where AMTS servant is convicted by a competent court and sentenced to imprisonment, departmental proceedings against him should not be

completed till the result of the appeal is known. In my view, the said provision applies to an entirely different situation where the Corporation is seeking to rely upon conviction of an employee in a criminal case to pass order of penalty based only on such a conviction without holding a detailed departmental inquiry. In such a situation, it is provided in the said regulation that the final order in the departmental inquiry should not be passed till the appeal, if any, filed by the employee is disposed of. This regulation, therefore, cannot be applied to the facts of the present case since the petitioner is seeking to conduct a full-fledged separate departmental inquiry and is not placing any reliance on the conviction of the employee in a criminal case.

10. The reliance placed by the learned advocate for the respondent on the orders passed by this Court is also not of any avail to the respondent. Order dated 19.2.97 in Special Civil Application No.10161 of 1996 is an interim order and would therefore not form any binding precedent. Further, the bare reading of the said order makes it clear that the same is confined to the facts of the case and cannot be applied as a general principle of law. With respect to the order dated 6.8.2002 passed in Special Civil Application No.2782 of 2002 also, I find that the same does not lay down any ratio of general application and the order is confined to the facts arising in the said case.

11. The learned advocate for the respondent, as noted earlier, has also relied upon a decision reported in (2002) 1 SCC 100 (Roshan Deen v. Preeti Lal) in support of his contention that the High Court should not lightly interfere with the decision of the lower Tribunals in exercise of powers under Article 227 of the Constitution of India. In find that in the facts of the present case, interference with the order of the Tribunal is called for in view of the fact that the Tribunal has not considered the important aspects of the matter and committed error of law on the face of the record by granting stay against the final outcome in the departmental proceedings till the criminal case is decided. I find that the action of the Industrial Tribunal is contrary to the settled legal position and the impugned order has been passed without considering the facts of the case and without applying the law laid down by the Hon'ble Supreme Court. In that view of the matter, I would be failing in my duty if I do not interfere with the impugned order.

12. In view of the above discussion, I find that the order passed by the Industrial Tribunal under challenge

is required to be quashed and set aside. The impugned order dated 27.2.2004 is, therefore, quashed and set aside. The petition stands allowed. Rule is made absolute accordingly with no order as to costs.

13. The learned advocate for the respondent requests for stay of this order for a reasonable period to permit him to appeal against the same. The impugned judgment is stayed for a period of three weeks from today.

(Akil Kureshi, J.)
(vjn)